CHIN LEONG SOON & ORS. v. LEN CHEE OMNIBUS CO. LTD. & ANOR.

[F.C. (Suffian Ag. L.P., Gill and Ali F.JJ.) July 22, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 105 of 1969]

Practice and Procedure — Interpleader summons Discretion of judge — R.S.C. 1957, O. 57 rr. 1, 2 & 3.

In this case the appellants who are the administrators of the estate of Low Hon deceased had brought an action to have their names as administrators entered in the first respondent company's register in respect of 20 ordinary shares of which the deceased was the registered owner. The first respondents did not deny the appellants' claim but stated that one Chan Sow Lan (f) was also claiming to be the owner of the shares. The first respondents took out an interpleader summons and an order was made in the High Court granting them leave by way of interpleader and directing the trial of an issue between the appellants and the second respondent (the claimant in the court below) with regard to the title to the 20 shares in the first respondent company and dividends and shareholders' allowance in respect of the said shares.

The main question to be decided in this appeal was whether all the conditions mentioned in O. 57 rr. 1 and 2 existed in the present case.

Held, dismissing the appeal (Suffian Ag. L.P. and Gill F.J., Ali F.J. dissenting): all the conditions mentioned in Order 57 rr. 1 and 2 of the Rules of the Supreme Court existed in the present case and the appellate court could not interfere with the discretion exercised by the learned judge, as there was nothing to suggest that he had exercised his discretion on a wrong principle or that any miscarriage of justice had been occasioned by the order which he made.

Cases referred to:-

(1) *Farr* v. *Ward* (1837) 2 M. & W. 844; 150 E.R. 1000.

(2) *Crawshay* v. *Thornton* (1837) 2 My. & Cr. 1, 19; 40 E.R. 541, 548.

(3) *Crawford* v. *Fisher* (1842) 1 Hare 436; 66 E.R. 1103, 1105.

(4) *Cockrane* v. *O'Brien* 2 J. & L. 380.

(5) *Desborough* v. *Harris* (1855) 5 De G.M. & G. 439; 43 E.R. 940.

(6) *Attenborough* v. *St. Katherine's Dock Company* (1873) L.R. 3 C.P.D. 450, 455-6.

(7) *Ex parte Mersey Docks and Harbour Board* [1899] 1 Q. B. 546, 551.

(8) *Robinson* v. *Jenkins* (1890) 24 Q.B.D. 275.

(9) *Murietta* v. *South American Company* (1893) 62 L.J.Q.B. 396.

(10) *De La Rue* v. *Hernu* [1936] 2 All E.R. 411, 414.

(11) *Scott* v. *Frank F. Scott (London) Ltd.* [1940] Ch. 794.

(12) *Watson* v. *Park Royal (Caterers) Ltd.* [1961] 2 All E.R. 346.

(13) *Sun Insurance Office* v. *Galinsky* [1914] 2 K.B. 545.

(14) *Hilliard* v. *Hanson* (1882) 21 Ch. D. 69, C.A.

(15) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228.

(16) *Isaac* v. *Spilsbury* (1833) 2 Dowl. 211; 131 E.R. 805.

(17) *Harrison* v. *Payne* (1836) 2 Hodg. 107.

(18) *Sharpe* v. *Redman* (1837) 2 Will. Woll. & Dav. 375.

The following additional cases were cited in argument: *Meux* v. *Bell* (1833) 6 Sim. 175; *Mason* v. *Hamilton* (1831) 5 Sin. 19; *Ukewich* (1890) 24 Q.B.D. 750, C.A.; *Morgan* v. *Marsack* 35 E.R. 881, 883; *Evans* v. *Bartlam* [1937] 2 All E.R. 646; *Ward* v. *James* [1965] 1 All E.R. 563, 570; *Miranda* v. *Khoo Yew Boon* [1968] 1 M.L.J. 161, 164.

FEDERAL COURT.

K. L. Devaser for the appellants.

S. Kulasegaran for the first respondent.

Kirpal Singh Brar for the second respondent.

Cur. Adv. Vult.

Suffian Ag. L.P. (read by Gill F.J.): I think that this appeal should be dismissed.

The relevant provisions governing this appeal are rules 1, 2 and 3 of Order 57 of the Rules of the Supreme Court.

The administrators of the mother's estate make a claim against the company. The daughter also makes a claim against the company. Accordingly there are two parties making adverse claims against the company.

The company has satisfied the learned judge that —

(a) it has no interest in the subject matter in dispute;
(b) it does not collude with the administrators of the mother's estate nor with her daughter; and
(c) it is willing to pay or transfer the subject matter into court or to dispose of it as the court may direct.

So all the conditions in rule 2 have been fulfilled.

The title of the administrators of the mother's estate is based on the fact that her name appears as a shareholder on the company's register. The title of the daughter is based on her allegation that when she signed the transfer of the shares in favour of her mother she thought that she was signing a mere power of attorney. The titles of the two claimants do not have a common origin but are adverse to and independent of each other. Nevertheless by rule 3 the company is not disentitled to relief.

I am of the opinion that the learned judge has rightly exercised his discretion.

Gill F.J.: This is an appeal against an order granting leave by way of interpleader to the first respondents (defendants in the action) and directing the trial of an issue between the appellants (plaintiffs in the action) and the second defendant (claimant in the court below) with regard to the title to 20 shares under certificate No. 132 in the defendant company and dividends and shareholders' allowances in respect of the said shares.

The plaintiffs are the administrators of the estate of Low Hon alias Low Hong alias Liew Ah Hong alias Liew Ah Heng (f) deceased. The deceased died on 17th August, 1963 and the plaintiffs obtained letters of administration to her estate on 20th November, 1967. On the date of her death the deceased was the registered owner of the shares in question in the defendant company. The claimant is the daughter of the deceased and as such a beneficiary of the estate administered by the plaintiffs.

The plaintiffs commenced their action on 19th July, 1969, their claim being that their names as administrators of the estate of the deceased be entered in the defendant company's register and that the defendant company do pay to them a sum of $9,327 being dividends and shareholders's allowances due on the said shares.

In their statement of defence the defendants did not deny the plaintiffs' claim but added that one Chin Sow Lan (f) (the claimant) was also claiming to be the owner of the said 20 shares. In their affidavit in support of their interpleader summons they said that the right to the same shares was also claimed by the claimant, and that she had given notice of her claim by her solicitor's letter of 14th August, 1969. They further said that they did not in any way collude either with the claimant or with the plaintiffs, and that they were willing to transfer the said shares or to dispose of them in such manner as the court might direct.

On the interpleader summons being taken out, the claimant filed an affidavit in which she stated her reasons for her claim. Her story briefly is that on 16th May, 1949 she acquired and became the registered owner of 10 shares in the defendant company. On 12th February, 1953 she acquired and became the registered owner of a further 10 shares in the said company, so that in or about September, 1957 she was the registered owner of the 20 shares which are the subject matter of the dispute in the present case. In that month she went to see one Wong Ah Chew, a director of the company, and said that as she intended to leave Ampang to settle down in Singapore she wanted to give her mother, the said Low Hon deceased, a power of attorney to collect the monthly allowances and dividends arising from her shares in the company. A few days later her mother saw Wong Ah Chew with a share transfer form and requested him to get the form signed by her (the claimant). She signed the form at the request of Wong Ah Chew, on being informed that it was a power of attorney which would enable her mother to collect the monthly allowances and dividends arising from her said 20 shares. In other words, there was a serious allegation that she signed the transfer form, thinking it was a power of attorney to her mother, on the fraudulent misrepresentations made to her by Wong Ah Chew.

Apart from her solicitor's letter of 14th August, 1969, the claimant had made a claim to the shares in two previous proceedings in the High Court at Kuala Lumpur in which the present action by the plaintiffs was filed.

On 1st August, 1968 she made an application by way of originating summons (No. 252 of 1968) against the defendants in the present action for an order that the register of members of the defendant company be rectified by striking out the name of Low Hon and inserting in lieu thereof her name as the holder of the said 20 shares. In her affidavit in support of the originating summons she said that she discovered that her shares had been transferred to and registered in her mother's name only subsequent to her mother's death. Her application was dismissed on 19th August, 1968 on the ground that it was not in order, presumably because the plaintiffs in the present action had not been made parties to the application.

On 20th December, 1968 she took out another originating summons (No. 472 of 1968) for a similar order. The defendants and the plaintiffs in the present action were made parties to that application, but her application was again dismissed with liberty for her to file a proper action for the relief sought within one month from the date of dismissal of her application.* She had not filed any action as directed before this action was commenced, although she had requested the defendants to agree to an extension of time for her action to be brought.

The order appealed from was made under 0.57 of our Rules of the Supreme Court, 1957, which is in *pari materia* with Order LVII of the English Rules of the Supreme Court, 1883. Before the coming into force of the English Rules of practice, the law as to interpleader was contained in the Interpleader Act, 1831 as amended and altered by the Common Law Procedure Act, 1860. I mention this because counsel for the appellants has cited and relied on a number of cases which were decided under the old law.

To take but a few of the authorities under the old law, in *Farr* v. *Ward*[1] the defendant having purchased cattle from the plaintiff, accepted a bill in payment, with a blank for the name of the drawer, and remitted it by post to the plaintiff. This bill subsequently came into the hands of *B* and *S* for a valuable consideration. The plaintiff denying that he had ever authorised payment by an acceptance, or that he had ever received the bill or indorsed it, brought an action against the defendant for the price of the cattle. *B* and *S* also threatened to commence an action against him upon the bill. It was held that the defendant was not entitled to relief under the first section of the Interpleader Act. Alderson B. said:

"You do not shew that there are cross claims on one and the same subject matter. Your answer to the one claimant is, that the signature of the drawer is a forgery: your answer to the other arises out of the sale of the cattle, and that you paid for them by a bill. How do you satisfy us that you cannot in any case be liable to both parties? If you may be so liable, that takes away our jurisdiction. You had better try first whether you are not liable to the plaintiff."

In *Crawshay* v. *Thornton*[2] Lord Chancellor Cottenham said:

"The case tendered by every such bill of interpleader ought to be that the whole of the rights claimed by the defendants may be properly determined by litigation between them, and that the plaintiffs are not under any liabilities to either of the defendants beyond those which arise from the title to the property in contest; because, if the plaintiffs have come under any personal obligation, independently of the question of property, so that either of the defendants may recover against them at law, without establishing a right to the property, it is obvious that no litigation between the defendants can ascertain their respective rights as against the plaintiffs; and the injunction, which is of course if the case be a proper subject for interpleader, would deprive a defendant, having such a case beyond the question of property, of part of his legal remedy, with the possibility at least of failing in the contest with his co-defendant; in which case the injunction would deprive him of a legal right, without affording him any equivalent or compensation. Such a case, undoubtedly, would not be a case for interpleader."

Crawshay v. *Thornton*[2] was followed in *Crawford* v. *Fisher*[3] in which Vice-Chancellor Wigram said:

"It is of the essence of an interpleading suit that the plaintiff shall be liable to one only of the claimants; and the relief which the court affords him is against the vexation of two proceedings on a matter which may be settled in a single suit."

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* [1969] 2 M.L.J. 202.

The case would appear to have been decided on the basis that a suit of interpleader ought to be so constituted at the hearing that the decree may embrace the whole property, which is the subject of the claims of the defendants, whereupon the court is required to adjudicate.

In *Cochrane* v. *O'Brien*[4] the facts were as follows. A person paid a sum of money into a bank in his own name upon a deposit-receipt, and shortly afterwards, by his direction, his brother lodged an additional sum in the same bank, and obtained a new deposit-receipt in the name of their sister, for the whole amount, and the old receipt was cancelled: the first depositor having died, his brother, as his administrator, claimed the money, alleging that the gift to the sister was incomplete, while she also demanded the money of the bank. Lord St. Leonards held that that was not a case of a double demand for one duty, though a case in which there might be two liabilities, and decided that it was no case for interpleader on the part of the bankers.

Crawshay v. *Thornton*[2] and *Cochrane* v. *O'Brien*[4] were cited with approval in *Desborough* v. *Harris*[5] in which a life insurance company received notice of an assignment by an insurer of a policy, which the company had granted, and the insurer afterwards became insolvent. Soon after the death of the person whose life was insured, the assignee for value applied for payment of the sum due upon the policy, and the company inquired of the provisional assignee of the insolvent whether he would consent to payment being made to the assignee for value. The provisional assignee said he could not give such consent, but that it must be sought for from the Court of Insolvent Debtors. The insolvent himself gave notice to the company not to pay over the policy monies to his assignee for value, on the ground that the debt for which it was assigned as a security was satisfied. In the meantime an action was brought upon the policy by the assignee for value, in the name of the insolvent, against the company. It was held that it was not a case in which the company were entitled to file their bill of interpleader against the plaintiff in the action, the insolvent and his provisional assignee, the insolvent having no title, and the title of his provisional assignee being subordinate to that of the assignee for value. The Lord Chancellor Lord Cranworth said at page 947:

"Now the foundation of the right to file a bill of interpleader is, that there is a conflict between two or more persons claiming the same debt or obligation. That is stated in all the cases and in all the treatises of authority on the subject, and is a matter which admits of no doubt. Where such a state of things exists, and when that double claim has not been occasioned by the conduct of the person who is liable to discharge the debt or obligation, he may obtain the assistance of this court, and upon bringing into court the amount of the debt in dispute, the court will relieve him, and put the conflicting claimants to litigate their rights between one another."

What would appear to emerge from the old authorities, which I have considered, is that a plaintiff or a defendant, as the case may be, is not entitled to any relief by way of interpleader if the double claim against him has been occasioned by his own conduct, or if it is not a case of a double claim in respect of one liability but double claims in respect of two separate liabilities which cannot be adjudicated upon in a single suit. It is on that basis that counsel for the appellant here has contended that this was not a case in which interpleader relief should have been granted to the defendants. I shall deal with that contention at a later stage. For the present, I will content myself by citing the following passage from the judgment of Bramwell L.J. in *Attenborough* v. *St. Katharine's Dock Company*[6]:

"The only case at all in favour of the plaintiffs is *Crawshay* v. *Thornton*[2]. That was a case of a bill of interpleader filed under the practice formerly existing in the Court of Chancery, and it is unnecessary to consider whether it was correctly decided; for in the cases before us the summonses were issued under 1 & 2 Wm. 4, c.58 (Interpleader Act, 1831), and, as I have before intimated, the facts appear to fall precisely within the words of that statute. But I wish also to remark that *Crawshay* v. *Thornton*[2] was decided before the passing of the Common Law Procedure Act, 1860, s. 12, and from my own knowledge as one of the common law commissioners I can say that it was intended to do away with the effect of that decision."

It is also to be observed that the essence of section 12 of the Common Law Procedure Act, 1860 (since repealed) was incorporated in rule 3 of Order 57, which reads as follows: —

"The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another."

Furthermore, in the words of A. L. Smith L.J. in *Ex Parte Mersey Docks and Harbour Board*,[7] it is not necessary to discuss the law as to interpleader in times anterior to the Common Law Procedure Act, 1860, or after the passing of that Act but before the Judicature Act, 1881. The matter now depends upon the provisions of Order 57 of our Rules, which, as I have already stated, is in identical terms with Order LVII of the English Rules. I would therefore go straight to that Order.

Rule 1 of Order 57 provides that

"relief by way of interpleader may be granted (a) where the person seeking relief (in this order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this order called the claimants) making adverse claims thereto."

This provision is subject to no limitation, except that contained in rule 2 of the same Order, which says that

"the applicant must satisfy the court or a judge by affidavit or otherwise (a) that the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and (b) that the applicant does not collude with any of the claimants; and (c) that the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court or a judge may direct."

The main question to be decided in this appeal is whether all the conditions mentioned in rule 1 and rule 2 exist in the present case. As to rule 1, it is abundantly clear from the facts of the case that there are two parties making adverse claims to the same shares and to the dividends and income arising therefrom. There can be no doubt that the dividends and income represent a debt which is due from the defendant company to the rightful owner of the shares. That the defendants are entitled to interplead in respect of the claim by each of the parties to the shares themselves is clear from the decision in *Robinson* v. *Jenkins*[8] in

which Fry L.J. said that the word "chattels" is one of the widest words known to the law in its relation to personal property, and therefore includes deeds and other papers, and choses in action, for instance, the shares in a joint stock company (see *Halsbury's* Laws of England, 3rd edition, Vol. 22, page 459, paragraph 909).

There can also be no doubt that the conditions mentioned in rule 2 are fulfilled. I do not see any force whatsoever in the argument put forward by counsel for the appellant, on the authority of *Murietta* v. *South American Company*,[9] that the defendants are playing the same game as between the parties or that they have a financial stake in the result of the proceedings. There is in fact not the slightest evidence of any collusion on their part with either of the parties. That a director of the defendant company procured from the claimant a transfer in respect of the shares in favour of her late mother, when her intention was in fact to give her mother a power of attorney, can lead to no inference of collusion by the company with the claimant. The utmost that can be said in this connection is that the director was guilty of fraudulent misrepresentation, so that he and perhaps the company are liable in damages.

That brings me to the ground of appeal that as the claimant also has some sort of claim for damages against the defendants, this is not a proper case for interpleader relief. I do not think that ground is tenable. In the first place, the claimant has made no declaration of intention to sue the defendant for damages. Secondly, where the main object of dispute is specified goods or money, the existence of a claim for damages will not itself bar the applicant from obtaining the relief sought (see *Halsbury*, 3rd edition, Vol. 22, page 459, paragraph 909). Even if there is a claim for damages it is always open to the court to enlarge the terms of the order so as to give the claimant liberty to bring a separate action in respect of such a claim (*per* A. L. Smith L.J. in *Ex Parte Mersey Docks and Harbour Board*[7]). In *De La Rue* v. *Hernu*[10] Greer L.J. said:

"... it seems to me the court has not got to inquire as to whether one of the claimants is a person who could or could not bring an action for tort against the other claimants. All the court has to determine is whether or not it is necessary, for the purpose of assisting by the means of interpleader, the defendant in the action, to make an order which will enable him to know to whom he has got to account."

It is clear that the plaintiffs as administrators have the legal right to the shares of which the deceased was the registered holder, and that they are entitled, in the absence of any power of veto conferred on the company by its articles of association, to have their names entered on the register if they so desire, as a right ancillary to their legal title to their shares (see *Scott* v. *Frank F. Scott (London), Limited*[11]). It can therefore be argued that the defendants are estopped from denying the plaintiffs' claim to the shares. But that is no reason for not granting interpleader relief. This is clear from the following *dictum* of Brett L.J. in *Attenborough* v. *St. Katharine's Dock Company*[6] (at page 460):

"... I confess that in my view, although a defendant in possession of goods may be technically estopped from denying the plaintiff's claim to them, yet if a *bona fide* claim is made to them by a third person, a judge ought to disregard the technical estoppel and to direct an issue under the interpleader Acts, to try the question as to the property between the plaintiff and the claimant."

The above *dictum* was followed in *Ex Parte Mersey Docks and Harbour Board*[7] when A. L. Smith L.J. said at page 552:

"Assuming for the purposes of this appeal that there was such an estoppel, does that limit the jurisdiction to grant relief by way of interpleader given by the rule? In my opinion it does not. The conditions specified in Order LVII being fulfilled, I think the judge clearly had jurisdiction to make the order."

It was held in *Watson* v. *Park Royal (Caterers), Ltd.*[12] that the discretionary relief of interpleader would not be granted, unless there appeared to be some real foundation for the expectation of a rival claim and unless the claimant acted with reasonable promptitude. Can it possibly be said that the claimant has no real foundation for her claim? I do not think so. Her claim is clearly based on the doctrine of *non est factum*, which means that if a person, owing to an error, executes a legal document which is of an entirely different character from that which he intended to sign, he is entitled to found his claim on it or to plead it as a defence if he is sued on the document. The claimant was the registered owner of the shares in dispute until 1957, and she has stated on oath that she did not know that her shares had been transferred to her mother until after her mother's death. Can it be said that she did not act with reasonable promptitude in making her claim? Again, I do not think so. Obviously she could not make her claim until some one had taken out letters of administration to her late mother's estate, and the evidence is that she made her claim in two separate proceedings in the court below in respect of these shares before the present action by the plaintiffs was filed.

It is contended for the appellants that her claim is barred by limitation. But that is an issue which will have to be decided at the trial of the action between the rival claimants. Quite clearly, a judge hearing an application on an interpleader summons is not required to go into the merits of any defence which might be raised in the action before exercising his discretion to grant or refuse interpleader relief.

In further support of his appeal counsel for the plaintiffs cited to us the case of *Sun Insurance Office* v. *Galinsky*.[13] That was a case in which it was held that the insurance company were not entitled to relief by way of interpleader, upon the ground that the lessee had not made any claim to the insurance money, and that therefore there were not "two or more parties making adverse claims" within Order LVII, rule 1(a). The other ground upon which interpleader relief was refused was that, as the lessor was claiming the performance by the insurance company of their statutory obligation under section 83 of the Act of 1774 to expend the insurance money in rebuilding the house, and as the lessee was claiming that the insurance company should pay the money to him, there were not two or more parties making "adverse claims" in respect of a

liability of the insurance company "for any debt, money, goods, or chattels" within the meaning of the same Order. Needless to say, that case does not help the plaintiffs in any way.

Another argument that might be advanced on behalf of the plaintiffs is that there would be no bar to the claimant bringing a separate action against them if they succeed in getting the order they seek in their action and the defendants are denied interpleader relief. I do not think there can be any substance in any such argument, because the courts lean against multiplicity of suits. Why should there be a separate action when the whole question can be thrashed out in this action itself by the defendants dropping out of the action and leaving it to the plaintiffs and the claimant to fight it between themselves? That is obviously what the learned judge had in mind when in the exercise of his discretion he granted interpleader relief to the defendants and ordered that the issues be stated and tried between the claimant as plaintiff and the plaintiffs as defendants. There was ample justification for that order to be made on the basis that there was *prima facie* evidence of the claimant's claim, so that there was real foundation for the defendants' apprehension of being sued by her in respect of the same shares. *Hilliard* v. *Hanson,*[14] which has been cited by the learned judge in his grounds of judgment in support of the order which he made, is an authority for the legal proposition that once an interpleader summons has been issued the parties concerned must await the result of the action in consequence thereof before filing any separate action.

Halsbury's Laws of England, 3rd edition, Volume 22, page 458 at paragraph 908, summaries the law relating to interpleader as follows: —

"The relief is discretionary and cannot be claimed as of right. Provided, however, that the applicant fulfils the necessary conditions, and both claimants have substantive claims, the jurisdiction of the court is limited only by the terms of the relevant rule of court and the court leans strongly in favour of granting the application if possible. Relief will therefore be granted if the conditions relating to jurisdiction and procedure are fulfilled wherever the court is satisfied that it is proper to do so.

In particular, relief may be granted even though the claimants or any of them claim under an equitable title, or even though the applicant may be estopped, as for instance by bailment or agency, from denying a claimant's right, and even where the relief which can be given is not complete. Where there is a question of estoppel the order directing the issue between the claimants should be so framed as not to shut out either claimant from asserting any claim that he may have against the applicant on the estoppel, but should leave it open to him to assert that claim if defeated by the other claimant on the issue."

Except as mentioned in rule 2, I cannot find any limitation on the power of a judge to grant relief by way of interpleader, except, of course, that he must be satisfied that under the circumstances of the case it is just and proper that the relief should be granted. The learned trial judge in the present case exercised his discretion as to the justice and propriety of granting the relief asked for in the circumstances of the case. The principles upon which a court will act in reviewing the discretion exercised by a lower court are well settled. There is a presumption that the judge has rightly exercised his discretion. The appellate court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice (*per* Lord Guest in *Ratnam* v. *Cumarasamy & Anor*[15]).

There is nothing to suggest that the learned trial judge exercised his discretion on a wrong principle or that any miscarriage of justice has been occasioned by the order which he made. I would dismiss this appeal with costs.

Ali F.J.: The appellants, as administrators of the estate of Low Hon @ Low Hong @ Liew Ah Hong @ Liew Ah Heng (f), deceased, who died on the 17th August, 1963, brought the action in this appeal for an order that their names be forthwith entered on the register of the company of Len Chee Omnibus Co. Ltd., (hereinafter referred to as the company) in respect of 20 ordinary shares. They further prayed that upon the rectification of the company's register an order be made directing to pay them forthwith the sum of $9,327.00 as dividends and share-holders' allowance. As usual they also asked for costs. In their statement of claim they stated that on 25th November, 1967 they sent a photostat copy of the grant of letters of administration to the company and on the 27th November, 1967, they sent a formal application for transmission of the said shares to them. Upon the company's refusal or failure to register them as holders of the shares they issued on 19th July, 1969 a specially indorsed writ. On 20th August, 1968 they applied for summary judgment under Order 14. In the affidavit verifying their cause of action they stated the belief that the company have no defence to the action. On the 25th August, 1969, the company filed a defence stating to the effect that they were unable to comply with the appellants' request for registration as there was another person named Chin Sow Lan (f), who was claiming to be registered as shareholder of the 20 shares. They also indicated that they would seek interpleader relief. On the 26th August, 1969, they issued an interpleader summons. In the supporting affidavit affirmed by one of their directors, Mr. Chan Yat Fatt @ Chan Wing Fatt, the same reason was given for the company's inability to comply with the appellants' request for registration. The appellants filed a counter-affidavit stating to the effect that the other claimant, Chin Sow Lan, has no real claim against the company to justify the granting of the interpleader relief. It was disclosed, *inter alia,* that in 1968, Chin Sow Lan had applied to the court by an originating summons for an order that she be registered as the shareholder but her application was dismissed. It is not necessary to inquire into the reasons for the dismissal. The fact remains that up to now she has not filed any action against the company to assert her claim as a shareholder to the 20 shares. She has, however, filed her affidavit in the interpleader proceedings and from this it is apparent that her claim to registration is based on the allegation that the transfer of the 20 shares to her mother was invalid. It was invalid because the 20 shares which were formerly hers were transferred to her mother as a result of inducement by one Mr. Wong Ah Chew, a director of the company, to sign the transfer form which she mistook

for a power of attorney intended merely to enable her mother to collect dividends and allowances. In face of these conflicting claims, the respondent company sought interpleader relief which was granted. This is an appeal from that decision.

In granting interpleader relief, the learned judge correctly stated the principle that the relief sought is discretionary and that the court in exercising its discretion cannot ignore the fact that the defendant in an action, in this case the respondent company, is entitled to invoke the authority of the court in order to compel the claimants to litigate their differences at their own expense in place of subjecting the defendant to uncertainty and expense of separate proceedings. In this case his Lordship thought it was only sufficient to consider whether the conflicting claims to registration were substantive and whether the respondent company have fulfilled all the necessary conditions to entitle them to the relief. It would appear from his judgment the learned judge has found that both the appellants and Chin Sow Lan have substantive claims against the respondent company. Whether these conflicting claims are in respect of a liability for debt, money, goods or chatels within the meaning of rule 1(a) Order 57 of the Rules of the Supreme Court have not been considered. In my opinion the nature of the claims made by the respective parties against the company renders it necessary to consider this question. As far as the appellants' claim is concerned, it is difficult to say that this is a claim in respect of a liability for debt, money, goods or chattels. Their claim, as it appears to me, is based on the established right to the 20 shares which by operation of law has been transmitted to them upon their appointment as administrators of the estate of the registered deceased shareholder, Low Hon @ Low Hong @ Liew Ah Hong @ Liew Ah Heng. In their pleadings they claimed that they have sent to the company a copy of the letters of administration as proof of their status and they have also made a written application for transmission. That these formalities have been complied with have not been denied by the company. Shortly put, therefore, the appellants' claim is a straightforward claim for registration which in terms of section 103(1) of the Companies Act 1965 could properly be met by the respondent company. But the respondent company refused the application for registration on the ground that there was another claim from Chin Sow Lan. Now that Chin Sow Lan's claim, likewise, does not appear to be in respect of the company's liability for debt, money, goods or chattels. Her claim is not based on any established right. Quite clearly it cannot be based on the right of a transferee under section 103(1) of the Companies Act because no proper instrument of transfer has been delivered or is likely to be delivered. Her claim is founded on the allegation that her mother has no right to the shares. Towards this end she must not only prove her allegations but must also decide upon the form of action which she proposes to take as would result in her being placed on the register as a shareholder. How she should go about it is a matter for her and her legal advisers. But as it stands it is impossible to say that she has a straightforward claim for registration.

Assuming, however, that the liability to register arising from the conflicting claims by the appellants and Chin Sow Lan is a liability falling within Order 57 it is necessary to consider whether there is only one liability which the respondent has to discharge. As was stated by the Vice Chancellor in *Crawford* v. *Fisher*[3] at page 1105 —

> "The office of an interpleading suit is not to protect a party against a double liability but against double vexation in respect of one liability. If the circumstances of a case shew that the plaintiff is liable to both claimants, that is no case for interpleader. It is of the essence of an interpleading suit that the plaintiff shall be liable to one only of the claimants; and the relief which the court affords him is against the vexation of two proceedings on a matter which may be settled in a single suit."

As I have said earlier, the appellants' claim is a claim for registration pure and simple. The liability of the respondent company, if any, is to register them as shareholders upon the application for transmission. The same liability, however, cannot possibly arise from Chin Sow Lan's claim. Her claim is not a straightforward claim for registration. It cannot be, inasmuch as it is based on an allegation that her mother, though registered as the shareholder, was not the original owner of the 20 shares. This is clearly implied in her affidavit. If she decides to pursue this claim against the company, the company could only expect that her action would be in respect of a liability for having negligently registered a wrong person as the shareholder. Her action cannot certainly be in respect of a liability to register her as a shareholder which can only arise if she has delivered a proper instrument of transfer. In the context stated there cannot be, in terms of Order 57, only one liability. That is one reason for my conclusion that interpleader relief cannot be granted.

Another reason for this conclusion is that there is no real foundation for the expectation to be sued. In *Watson* v. *Park Royal (Caterers), Ltd.*[12] Edmund Davies J. said at page 352 —

> "There is ample authority for the proposition that the discretionary relief of interpleader will not be granted unless there appears to be some real foundation for the expectation of a rival claim: see *Issac* v. *Spilsbury*[16], *Harrison* v. *Payne*[17] and *Sharpe* v. *Redman*[18]."

The respondent company seeking interpleader relief must make out a case for relief. In this case it must be shown that Chin Sow Lan's claim provides a real foundation for expectation to be sued. It is not enough for the company to say that Chin Sow Lan has made a claim. Were it otherwise the object of granting interpleader relief would be defeated. On record the company seems to have nothing more than the letter dated 14th August, 1969 from Chin Sow Lan's solicitors giving notice of her claim on which the foundation for the expectation to be sued can be founded. This letter contains no reason for the claim. The company might or might not be aware of the reasons. If they were aware, they have not mentioned them in the affidavit filed on their behalf. If not, it is surprising that they never bothered to inquire. Such an inquiry, if made, would reveal at once that Chin Sow Lan has no established right to be registered as a shareholder inasmuch as she is unable to deliver a proper instrument of transfer. In terms of section 103(1) of the Com-

panies Act, delivery of a proper instrument of transfer is the only way by which a person can be registered as a shareholder. However, it became manifestly clear during the hearing of interpleader summons that until Chin Sow Lan proves her allegation there can be no basis for the foundation for the expectation to be sued. To say that there was is to speculate on what she intends to do to assert her right. The fact that she has tried in 1968 and failed might provide reasonable ground for the belief that she was having some difficulty in asserting her right. After this set back she has not shown any real desire to pursue her claim except to send the letter of the 14th August, 1969, just referred to. The excuse she gave for her inability to file a regular action is not worth a moment's notice. Even if there was anything in the way against her filing a proper action, she could easily have come to the court for the necessary directions or orders. The respondent company, on the other hand, preferred to let things go their own way but when pressed by the appellants thought it convenient to ask for interpleader relief. This they cannot do for there is absolutely nothing in Chin Sow Lan's claim which, so far as they are aware, could have been made a real foundation for the expectation to be sued in respect of the liability to register her as a shareholder.

I would accordingly allow this appeal with costs to the appellants in any event. This means that the appellants will now be at liberty to proceed with their application for summary judgment which is still pending in the court below.

Appeal dismissed.

Solicitors: *K. L. Devaser & Co.; Ranjit, Thomas & Kula; B. Kaher & Kirpal Singh.*

SEPANG OMNIBUS SDN. BHD. v. CHRISTINA LOH SOO PANG & ORS.

[F.C. (Ong C.J. (Malaya) Gill F.J. and Ong Hock Sim J.) July 23, 1970]

[Malacca — Federal Court Civil Appeal No. X. 114 of 1969]

Negligence — Appeal — Whether appeal court can alter apportionment of liability made by trial judge — Inferences from facts.

This was a case in which four vehicles were involved in an accident. The trial judge has found that the drivers of a military truck and of a taxi blameworthy in the proportion of 25% and 75% respectively and had awarded damages accordingly. The owners of the taxi appealed against the judgment and contended that on the evidence the learned judge should have held that the driver of the military truck was the sole cause of the accident or that he and the driver of another motor car involved in the accident were jointly at fault.

Held, allowing the appeal: on the evidence as a whole the conclusion that must be drawn is that the driver of the military truck was overtaking without regard to oncoming traffic, that the taxi was wholly on its own side but its right of way was blocked by the truck and that the driver of the military truck was therefore solely to blame for the accident. In the instant case the court was justified in interfering with the apportionment of liability of the learned trial judge as he had made the wrong inferences from the facts.

Cases referred to:-

(1) *Kerry* v. *Carter* [1969] 1 W.L.R. 1372, 1376.

(2) *Brown* v. *Thompson* [1968] 1 W.L.R. 1003.

(3) *Quintas* v. *National Smelting Board* [1961] 1 W.L.R. 401, 409.

FEDERAL COURT.

K. E. Hilborne (*Edgar Joseph Jr.* with him) for the appellants.

D. H. Murphy for the first and second respondents.

D. L. Pickard for the third respondent.

Khoo Eng Chin for the fourth respondent.

Cur. Adv. Vult.

Ong C.J.: At about 1.30 p.m. on March 4, 1968 a 5-ton Bedford military truck driven by L/Cpl. Tek Bahadur along the Tampin-Seremban Road collided almost head-on with a Mercedes taxi belonging to the Sepang Omnibus Co. and overturned. In doing so it fell upon a Volkswagen motor-car, which was following the taxi, crushing its driver to death. Three persons in the taxi, including its driver, also died of their injuries. In an action for damages brought by the widow and dependants of Lo Ki Nang, driver of the Volkswagen, the learned trial judge of the High Court in Seremban held the drivers of the military truck and the taxi blameworthy in the proportion of 25% and 75% respectively and awarded damages accordingly. Another defendant, Mohamed Shariff, was sued as contributing by his own act to the accident, but he was exonerated from blame. The owners of the taxi now appeal against the said decision. They contend that on the evidence the learned judge should have held, either that L/Cpl. Tek Bahadur's negligence was the sole cause of the accident, or that he and Mohamed Shariff were jointly at fault. There is no dispute as to the quantum of the award.

Four vehicles were in fact involved in the accident. Two of them were proceeding towards Seremban and the other two in the opposite direction. For more than a mile before the collision the truck had been following Mohamed Shariff northwards in his Morris 1100. At the 20½ milestone Mohamed Shariff stopped to set down Zainab, a schoolgirl passenger, opposite the gates of her house, situated on his left. The road appeared clear of oncoming traffic. The truck was a considerable distance behind but visible. By the time Mohamed Shariff set his car in motion again the truck had come up very close behind him. He then saw two cars approaching — they had just appeared over the brow of the hill. The taxi was ahead of the Volkswagen — how far ahead he did not say — and "close to the centre white line". The Volkswagen was "close to the edge of the road". When it was almost alongside of Mohamed Shariff — in his own words "about to pass me" — he heard a bang and, viewing the scene on his rear mirror, he saw the truck toppling over on top of the Volkswagen. He stopped, but did not get down and after a few moments continued on his journey towards Seremban. According to him the collision occurred, not in front of Zainab's house, but about 100 yards past it. On this salient fact he is corroborated by inspector Ahmad Nasri, the investigating officer. No measurements had been taken of the actual distance,